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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 CHRISTOPHER HARRIS,  
12                                      Petitioner,  
13                      v.  
14 J. SOTO, Warden,  
15                                      Respondent.  
16

**Case No. CV 15-00352 BRO (RAO)**

**ORDER ACCEPTING FINDINGS,  
CONCLUSIONS, AND  
RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE  
JUDGE**

17            On March 25, 2016, the United States Magistrate Judge issued a Report and  
18 Recommendation, recommending that petitioner's Petition for Writ of Habeas  
19 Corpus be denied and that this action be dismissed with prejudice. On April 13,  
20 2016, Petitioner, who is represented by counsel, filed objections to the Report and  
21 Recommendation.

22            The magistrate judge's Report and Recommendation sufficiently addresses  
23 the bulk of the arguments made by Petitioner in his objections. A few of those  
24 arguments, however, warrant further discussion.

25            First, Petitioner argues that the magistrate judge did not address Petitioner's  
26 claim that his right to due process was violated by the admission into evidence of  
27 his co-defendant's pre-trial statement. (Objections at 2.) Instead, according to  
28 Petitioner, the magistrate characterized that due process claim as "an attack on the

1 application of [California’s law governing the admissibility of out of court  
2 declarations against penal interest].” (*Id.* at 2-3). This characterization was  
3 erroneous, according to Petitioner, because “[t]here is not a single argument in  
4 [P]etitioner’s Memorandum of Points and Authorities that discusses the  
5 misapplication of the Evidence Code.” (*Id.* at 2.)

6 This objection is not well-taken. Petitioner challenged the admission of his  
7 co-defendant’s pre-trial statements on primarily two grounds: (1) the admission of  
8 the statements violated the Confrontation Clause of the Sixth Amendment; and (2)  
9 the admission of the statements ran afoul of the Supreme Court’s decision in *Bruton*  
10 *v. United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968). (Pet.,  
11 Memo. Points & Auth. at 11-14). The entirety of Petitioner’s due process argument  
12 in his Memorandum of Points and Authorities in support of his Petition consists of  
13 the following: “In addition, the admission of evidence, even if error under state law,  
14 violates due process if it makes the trial fundamentally unfair. (*Duncan v. Henry*  
15 (1995) 513 U.S. 364 [130 L. Ed. 2d 865, 115 S. Ct 887].).” (Pet., Memo. Points &  
16 Auth. at 14.) In the next sentence, Petitioner argued: “To the extent that the Court  
17 of Appeal found the statement was admissible as an exception to the hearsay rule  
18 because it was made against [the co-defendant’s] interest, that finding is an  
19 unreasonable determination of the facts in light of the evidence presented.” (*Id.*)  
20 Petitioner then explained why, in his view, his co-defendant’s statement was not  
21 against her penal interest. (*Id.*)

22 Read in context, it is clear that Petitioner’s due process argument was  
23 premised on the fact that, in his view, the state court misapplied state law in finding  
24 that his co-defendant’s statement was admissible as a declaration against penal  
25 interest. The magistrate judge addressed and rejected that argument. (*See Report*  
26 *and Rec.* at 25-26.) In particular, the magistrate judge noted that Petitioner’s claim  
27 that the trial court misapplied California’s evidentiary rules in admitting his co-  
28 defendant’s statement as a declaration against penal interest is not cognizable on

1 federal habeas review. (*Id.*) The magistrate judge, moreover, explained that  
2 Petitioner could not transform his state law claim into a cognizable federal claim by  
3 invoking his right to due process. (*Id.* at 26.)

4 As noted above, however, Petitioner contends that he was not alleging that  
5 the state court misapplied state law in finding that his co-defendant's statement was  
6 admissible as a declaration against penal interest. (Objections at 2.) Rather, he  
7 maintains that he argued that "the state court's finding that [his co-defendant's]  
8 statement was against penal interest was an unreasonable determination of the facts  
9 in light of the evidence presented at trial." (*Id.* at 4.) But this is a distinction  
10 without a difference. Under either argument, Petitioner would have this Court  
11 review the state court's application of its rules pertaining to the admission of a non-  
12 testifying witness's out of court declaration to determine if, indeed, the declaration  
13 was against the witness's penal interests.

14 Petitioner also faults the magistrate judge for failing to address his argument  
15 that the admission of his co-defendant's statement violated petitioner's right to due  
16 process because the statement was made by an accomplice and, thus, was  
17 unreliable. (*See* Objections at 2-3.) Petitioner, however, did not make this  
18 argument in his Memorandum of Points and Authorities. To be sure, he stated that  
19 "accomplice statements are 'presumptively suspect,' when they try to spread blame  
20 to others" and that courts take great care to "distinguish between the use of a  
21 codefendant's confession against the codefendant himself and the use of that same  
22 confession against a non-declarant defendant." (Memo. Points & Auth. at 13.) But  
23 Petitioner made these statements in arguing that the admission of his co-defendant's  
24 pre-trial statement violated his right to confront the witnesses against him. (*See id.*  
25 at 14 ("Whether testimonial or not, a codefendant's inculpatory statement is the  
26 very type of inherently suspect accusation which demands to be tested under the  
27 scrutiny of cross-examination. By allowing [the co-defendant's] statement to be  
28

1 admitted against [P]etitioner, without any redactions or limiting instruction, the trial  
2 court violated appellant's Sixth Amendment confrontation rights.".)

3       Regardless, to the extent that Petitioner intended to assert a due process claim  
4 challenging the reliability of his co-defendant's pre-trial statement, that claim  
5 would fail because it is, at its core, a challenge to the trial court's finding that the  
6 statement was a declaration against penal interest. As the magistrate judge noted in  
7 her Report and Recommendation, the court of appeal explicitly found that the  
8 circumstances under which the co-defendant's pre-trial statement was made  
9 rendered that statement reliable. (*See* Report and Rec. at 25 (citing Lodg. No. 13 at  
10 18)). And, as the magistrate judge explained, "Although the court of appeal  
11 acknowledged that the portion of [the co-defendant's] pre-trial statement that  
12 Petitioner sought to exclude implicated Petitioner as the shooter, the court of appeal  
13 nevertheless reasoned that the statement was admissible because [the co-defendant]  
14 was not attempting to 'mitigate her involvement in the offense.'" (*Id.* at 24 (citing  
15 Lodg. No. 13 at 16).) In other words, the court of appeal found that Petitioner's co-  
16 defendant was not trying to shift blame from her to Petitioner. The court of  
17 appeal's findings were reasonable in light of the evidence, as that evidence made  
18 clear that Petitioner's co-defendant implicated herself in the crime by admitting that  
19 she worked with Petitioner to lure the victim to the place where he was killed. (*See*  
20 *id.* at 24.) Accordingly, there is no merit to Petitioner's due process claim.


21       Second, Petitioner contends that the magistrate judge erred in addressing  
22 Petitioner's challenge to the pre-trial statement that prosecution witness Mericca  
23 Garner made to police. (Objections at 6.) Although Petitioner concedes that the  
24 magistrate judge addressed Petitioner's argument that Garner's statement was  
25 coerced, he nevertheless maintains that the magistrate judge was also required to  
26 determine if that statement was sufficiently reliable to be admitted at trial. (*See id.*)  
27 This argument is meritless. As the magistrate judge explained in her Report and  
28 Recommendation, "using a witness's coerced confession at the trial of another can

1 violate due process because ‘illegally obtained confessions may be less reliable than  
 2 voluntary ones. . . .’” (Report and Rec. at 16 (citation omitted).) Here, however,  
 3 Garner’s pre-trial statement was not coerced; thus, there was no need to question its  
 4 reliability. (*Id.* at 18-22.) In any event, as the magistrate judge noted, Garner  
 5 testified at trial and was subjected to cross-examination. (*Id.* at 22-23.) During that  
 6 examination, she testified that she had lied to the police because she feared being  
 7 arrested and because she feared that she would lose custody of her baby. (*Id.* at 22.)  
 8 As such, “the jury had all the information it needed to determine if Garner had been  
 9 truthful with police or whether she had merely implicated Petitioner out of fear of  
 10 the consequences attendant to not doing so.”<sup>1</sup> (*Id.*)

11 Based on the foregoing and pursuant to 28 U.S.C. § 636, the Court has  
 12 reviewed the Petition, all of the records and files herein, the Magistrate Judge’s  
 13 Report and Recommendation, and Petitioner’s objections thereto. The Court  
 14 hereby accepts and adopts the findings, conclusions, and recommendations of the  
 15 Magistrate Judge.

16 IT IS ORDERED that the Petition is denied and Judgment shall be entered  
 17 dismissing this action with prejudice.

18  
 19 DATED: May 3, 2016

20   
 21 BEVERLY REID O’CONNELL  
 22 UNITED STATES DISTRICT JUDGE

23  
 24 <sup>1</sup> Petitioner presumably believes that this reasoning is somehow inconsistent with the Court’s  
 25 prior reasoning regarding the admission of his co-defendant’s statement because, unlike Garner,  
 26 his co-defendant was not subjected to cross-examination; thus, the jury had no way to determine  
 27 the reliability of the co-defendant’s statement. Any such argument ignores the dramatically  
 28 different circumstances under which the two statements were made. Garner’s statement was  
 made during a police interrogation, whereas the co-defendant’s statement was made to her  
 brother-in-law at a party for Petitioner’s family. (*See* Report and Rec. at 24.) As the court of  
 appeal recognized, the circumstances underlying the co-defendant’s statement render that  
 statement reliable. (*See supra.*)